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Protracted conflicts in the GUAM area and their implications for international peace, security and development

Status of internally displaced persons and refugees from Abkhazia, Georgia and the Tskhinvali region/ South Ossetia, Georgia

Report of the Secretary-General

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 64/296, in which the Assembly requested the Secretary-General to submit a comprehensive report at its sixty-fifth session on the implementation of the resolution. The report covers the period from 1 June 2010 to 30 March 2011 and draws on information received from a number of United Nations entities.

2. In accordance with the provisions of the resolution, the report focuses on (a) the right of return of all refugees and internally displaced persons and their descendants, regardless of ethnicity; (b) prohibition of forced demographic changes; (c) humanitarian access; (d) importance of preserving the property rights of refugees and internally displaced persons; and (e) the development of a timetable to ensure the prompt voluntary return of all refugees and internally displaced persons to their homes.

II. Background

3. Following an escalation of conflict in 1992, which caused significant displacement of civilians, armed hostilities between the Georgian and Abkhaz sides ended with the signing in Moscow on 14 May 1994 of the Agreement on a Ceasefire and Separation of Forces (see S/1994/583 and Corr.1). This agreement was preceded by the signing in Moscow on 4 April 1994 of the quadripartite agreement on voluntary return of refugees and displaced persons (see S/1994/397), in which the parties agreed to cooperate and interact in the planning and conduct of activities to

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guarantee the safe, secure and dignified return of people who had fled from areas in the conflict zone to areas of their previous permanent residence. Armed hostilities between the Georgian and South Ossetian sides ended with the 24 June 1992 Sochi Agreement, which established a ceasefire between the Georgian and South Ossetian forces and the creation of the Joint Control Commission and Joint Peacekeeping Forces.

4. Following the hostilities which started in the Tskhinvali region/South Ossetia on 7 and 8 August 2008, in line with the six-point plan of 12 August 2008 and the implementing measures of 8 September 2008 (see S/2008/631, paras. 7-15), international discussions were launched in Geneva on 15 October 2008, under the co-chairmanship of the European Union, the Organization for Security and Cooperation in Europe (OSCE) and the United Nations (see S/2009/69 and Corr.1, paras. 5-7). The international discussions were to address the issues of security and stability and the return of internally displaced persons and refugees. By the end of the reporting period, 15 rounds of the Geneva discussions had been held, with participants meeting in two parallel working groups.

5. The participants in Working Group I discussed the security situation on the ground and concerns expressed with regard to detentions, procedures for crossings and other developments on the ground, including reports of military-related activities. They also continued discussions on the key issues of non-use of force and international security arrangements.

6. During the reporting period, Working Group II focused on the rights of displaced persons, including their right to return, and the humanitarian needs of all affected populations. The discussions focused on, among other things, finding consensus on a framework document affirming the fundamental, internationally recognized principles governing the treatment of displaced persons, the need for humanitarian access and the search for durable solutions for displacement, including voluntary return in safety and dignity.

7. Working Group II also systematically reviewed the situation on the ground and discussed possible humanitarian measures to meet specific needs of the internally displaced. Access to gas supply and to potable and irrigation water was among the concrete issues addressed during the recent rounds of the Geneva discussions. Special "information sessions" were conducted in conjunction with the formal Geneva sessions, during which United Nations experts familiarized the participants with, inter alia, the technical aspects of monitoring and promoting human rights, property and housing rights, property restitution and the criteria for determining the end of displacement.

8. At present, the Geneva discussions remain the only forum for relevant stakeholders to meet and address the issues identified in General Assembly resolution 64/296.

III. Right of return

A. Scope of displacement, return and local integration

9. No major developments took place during the reporting period with regard to the exercise by the refugees and internally displaced persons of their right to return.

No further major returns were observed to the areas adjacent to the Tskhinvali region/South Ossetia. Further returns to these areas are hampered by security concerns, destruction of houses and limited livelihood and economic opportunities due to the lack of functioning irrigation systems and access to fields, orchards and traditional grazing grounds. The handover of effective control over Perevi by the Russian forces to the Georgian authorities in December 2010 has not led to significant population movements, but has eased access for family members and humanitarian actors to the area.

10. Proposals have been made by concerned participants in the Geneva discussions in relation to the return of displaced populations to the Akhalgori district. The Office of the United Nations High Commissioner for Refugees (UNHCR) is presently undertaking consultations on the proposals for safe and voluntary return to the district. In this context further steps are needed to ease the crossing procedures in the area to allow individuals not only to maintain contact and follow developments in their home communities but also to make a free and informed choice whether to return or to integrate in areas of displacement or elsewhere.

11. According to the Ministry for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, as of 31 December 2010 there were 256,528 registered internally displaced persons. This represents some increase over the 249,365 persons registered in 2009 which is mainly attributable to the children born to internally displaced families and late registrations. This number includes 235,698 persons displaced during the earlier conflicts and 20,830 displaced during the August 2008 conflict.[1] In the context of the implementation of its "Action plan for the implementation of the State strategy on IDPs for 2009-2012", the Government of Georgia has made significant progress in the provision of durable housing solutions to internally displaced persons. According to the Ministry, by the end of 2010, 15,979 persons recognized under national legislation as "internally displaced persons" had been provided with durable housing in new settlements or rehabilitated and privatized former collective centres. In addition, 2,040 internally displaced persons received monetary assistance to meet their housing needs.

12. Relocations conducted in the context of the Government's efforts to provide internally displaced families with durable housing solutions (in particular when resulting in moves from the capital city of Tbilisi to more remote parts of the country) and related evictions had led to grievances and some protests among internally displaced persons, mainly linked to concerns over possible loss of livelihoods. Following a moratorium on the relocation process initiated by UNHCR, standard operating procedures were developed to enhance the transparency of the process and to ensure that all persons affected had indeed been offered housing alternatives and that the needs of particularly vulnerable persons were adequately addressed. It is important that in any relocation process the rights of internally displaced persons are respected and protected and that the process is transparent and offers legal safeguards.

13. Challenges concerning the integration of internally displaced persons also remain. The Government of Georgia assessed that $749 million ($449 million for construction of new buildings and $300 million for financial housing assistance)

[1] A total of 3,454 individuals were displaced twice, thus were counted twice.

would be required to fully meet the remaining housing needs of all internally displaced persons. However, the provision of durable shelter is an essential, but not the only, aspect of integration. The socio-economic aspects, such as economic subsistence and access to quality education, medical and social services, must be addressed as well. The United Nations agencies, funds and programmes, donors and other stakeholders will continue their efforts to address the needs of the displaced population, work towards durable solutions and assist the Government in protecting and ensuring the rights of the affected population.

14. It is estimated that over 45,000 people may have spontaneously returned or are in the process of returning to their homes in the Gali district. There was some evidence of a few more families returning to the Gali district during the reporting period. These individuals are officially considered internally displaced persons by the Government of Georgia and as such are eligible for assistance. Despite significant humanitarian efforts, the reintegration process has not yet been concluded as many persons still have needs and vulnerabilities resulting from their earlier displacement. Those who have spontaneously returned or are in the process of returning continue to express concerns about the security situation, including the level of crime, and the need for support in rebuilding housing and re-establishing sustainable means of subsistence.

15. More precise and comprehensive data on the numbers and profiles of those who have returned, or other conflict-affected communities residing in the Gali district, are not yet available. For a number of years, my Representative on the human rights of internally displaced persons and the United Nations High Commissioner for Refugees have called for the conduct of a verification and profiling exercise as a first step in assessing the protection and assistance needs of spontaneous returnees and their host communities. The conduct of such an exercise, as initially agreed in 2005, was supported by the Security Council in its resolutions 1752 (2007), 1781 (2007) and 1808 (2008). Unfortunately, no consensus has been reached on its implementation, and the issue remains on the agenda of Working Group II of the Geneva discussions.

16. Since the conflict in August 2008, the United Nations agencies, funds and programmes have had no operational access from the Government-controlled territory to the Tskhinvali region/South Ossetia and are therefore not in a position to verify or closely monitor displacement or return movements. However, in preparation for the sessions of the Geneva discussions, the co-chairs of the discussions and United Nations staff were able to visit the Tskhinvali region/South Ossetia and familiarize themselves with some of the rehabilitation efforts undertaken. The information from the Federal Migration Service of the Russian Federation indicates that 3,784 families (4,789 persons) from Georgia applied for recognition as refugees in the Russian Federation during the period from 2005 to 2010. Of this total, 1,805 families (2,278 persons) applied in 2008, 1,211 families (1,525 persons) in 2009 and 337 families (398 persons) in 2010.[2] A total of 137 families (177 persons) from Georgia were recognized as refugees in the Russian Federation between 2005 and 2010. Of this total, 60 families (68 persons) were recognized as refugees in 2007, 35 families (46 persons) in 2008, 39 families (60 persons) in 2009 and 2 families (2 persons) in 2010.[3] Moreover, 2,200 families

[2] See www.fms.gov.ru/about/statistics/data/details/38049/.

[3] See www.fms.gov.ru/about/statistics/data/details/38051/.

(2,609 persons) from Georgia were granted temporary asylum from 2005 to 2010. Of this total, 386 families (444 persons) were granted temporary asylum in 2008, 1,520 families (1,782 persons) in 2009 and 257 families (317 persons) in 2010.[4]

17. The actual number of refugees from Georgia in the Russian Federation is considered to be significantly higher, as many are not reflected in the official statistics, having regularized their residence status outside of refugee protection mechanisms or lost refugee status upon acquisition of Russian citizenship. Moreover, it is estimated that some 10,000 persons remain displaced within the Tskhinvali region/South Ossetia.

B. Institutional framework and operational measures

18. In 2005, UNHCR, the Danish Refugee Council, the Norwegian Refugee Council and the Swiss Agency for Development and Cooperation developed, in consultation with all stakeholders, "Strategic directions: promoting confidence-building for displaced and war-affected persons in Abkhazia". The strategic directions were aimed at supporting a "bottom-up" peacebuilding approach based on self-reliance and community involvement. They integrate protection and assistance efforts through returnee monitoring, addressing their concerns in discussions with relevant authorities and targeted assistance. Since April 2009, the strategic directions have been complemented by a strategic framework for continued humanitarian assistance which seeks to achieve durable solutions for returnees through integrated protection and assistance activities and promotion of their rights, with a view to preventing renewed displacement of the population in the Gali, Ochamchira and Tkvarcheli districts.

19. These efforts bring together as strategic partners, under the overall coordination of the United Nations Resident Coordinator, UNHCR, the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the World Food Programme, the Swiss Agency for Development and Cooperation and international non-governmental organizations (NGOs), namely Action contre la faim international, the Danish Refugee Council, the Norwegian Refugee Council, Première urgence and World Vision International.

20. In July 2010, the Government of Georgia complemented its "State strategy on occupied territories: engagement through cooperation" (adopted by Order N107 of 27 January 2010) with the "Action plan for engagement" (adopted by Order N885 on 3 July 2010, amended on 26 January 2011). The plan envisages the undertaking of a number of steps aimed at building trust and confidence among divided communities. These measures were followed in October 2010 by the issuance of the "Regulation of the Government of Georgia on approval of modalities for conducting activities in the occupied territories of Georgia". In this context, the United Nations agencies, funds and programmes will continue to engage in humanitarian action on the basis of their respective mandates and in the framework of multilateral and bilateral agreements governing privileges and immunities of the United Nations.

21. As noted in my previous report (A/64/819, para. 13), for any operational framework and/or liaison mechanism to be effective and serve its aims, it must be accepted and supported by all sides. In this context, I note with appreciation the

[4] See www.fms.gov.ru/about/statistics/data/details/38060/.

establishment by UNDP, in consultation with the United Nations Country Team and all relevant authorities, of a status-neutral liaison mechanism which aims to facilitate dialogue and interaction between the divided communities and the implementation of projects and activities. The liaison mechanism offers a framework of engagement that strictly respects the humanitarian mandates of the relevant United Nations actors and NGOs, clarifies basic rules of engagement, and allows participatory and human rights-based approaches in the design, planning and implementation of projects.

22. During the reporting period, the United Nations agencies, funds and programmes continued to assess and respond to various emerging humanitarian needs. An example of an effective United Nations response to an emerging challenge was the polio vaccination campaign implemented in late 2010 by the World Health Organization (WHO) and UNICEF which covered 98 per cent of the population below the age of 18. UNHCR supported the construction of 182 and the rehabilitation of 217 houses for returnees and other vulnerable populations, and the establishment of 21 social community centres in the Gali, Ochamchira and Tkvarcheli districts. These community centres are designed to mobilize local communities and address some key obstacles to sustainable return by providing, inter alia, medical assistance and income and educational opportunities. In addition, 63 small businesses were established, 275 persons received business training and 100 families received small greenhouses to enhance agricultural productivity.

23. During the reporting period, the issue of the freedom of movement of the local population, including through a possible increase in the number of crossing points, was discussed as part of the agenda of the Joint Incident Prevention and Response Mechanism chaired by the United Nations (see S/2009/254, para. 5). Some practical solutions have been identified to facilitate movements of schoolchildren and teachers. At the same time, a simplified permit system has facilitated crossing only by means of the Inguri River Bridge which, while welcomed by some, continued to add to travel distances and pose a significant burden on the population, particularly those residing far from the town of Gali. As a result, many members of the population in the Gali district, including spontaneous returnees and persons in the process of return, remain concerned about their freedom of movement and access to social infrastructure, including medical facilities, markets and family members in the Zugdidi district. The establishment of a crossing regime which meets these concerns remains crucial for improving living conditions for the local population, advancing the reintegration of returnees and preventing renewed displacement. In a related development, the issuance of documents to the local population in the Gali district, which had been suspended for several months, resumed in February 2011. It is essential to identify solutions for the provision of documentation in conformity with international law, including human rights law, and the principles governing the prevention and reduction of statelessness.

24. The principles and factors governing the implementation of the return of internally displaced persons outlined in my report on the status of internally displaced persons and refugees from Abkhazia, Georgia (A/63/950), in particular in paras. 8-14, remain valid. There is a complex nexus between the individual right to and the principle of voluntary, safe and dignified return and the establishment of conditions conducive to such return. The individual's right to return, in the case of an internally displaced person, derives from his or her right to freedom of movement as stipulated in article 12 (1) of the International Covenant on Civil and Political

Rights and, in relation to a refugee, from article 12 (4) of the Covenant, according to which "no one shall be arbitrarily deprived of the right to enter his own country". In accordance with article 12 (3) of the Covenant, the freedom of movement as established in article 12 (1) and (2) can only be subject to restrictions "which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights" recognized in the Covenant.

25. Thus, the right to return and its exercise by an internally displaced person cannot be formally linked to political questions or the conclusion of peace agreements. It is essential to recognize return as both a human right and a humanitarian issue that must be addressed irrespective of any solution to an underlying conflict. At the same time, it is primarily for the individual to assess the risks and make an informed choice whether or not to return at a given time. In doing so, a displaced person must take into account all factors which could affect his/her safety and dignity and ability to exercise basic human rights.

26. The role of the United Nations in the facilitation, design and implementation of organized return operations should take into account the need to avoid causing harm or contributing to the exposure of persons of concern to possible human rights violations. Therefore, activities related to organized returns must be based on a careful risk assessment, taking into consideration the existing security and human rights conditions and concerns, access to livelihood and basic services, and the voluntary nature of return.

IV. Prohibition of forced demographic changes

27. International human rights standards, as they have evolved in recent decades, provide guidance on managed population movements, including evacuations, and thereby strictly limit forced movements that result in demographic change. Under principle 6 of the Guiding Principles on Internal Displacement, every human being has the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. A number of provisions of international law,[5] such as article 12 of the International Covenant on Civil and Political Rights, guarantee not only the right to freedom of movement but also the freedom to choose one's residence, including the right to remain there.

28. While no major new displacement has been observed during the reporting period, the demographic consequences of earlier displacement remain. In this context, I would like to recall the observations of my Representative on the human rights of internally displaced persons in his report (A/HRC/13/21/Add. 3 and Corr.1 and 2, paras. 7-14) and referred to in my previous report (A/64/819, paras. 22 and 23).

[5] Universal Declaration of Human Rights (arts. 12 and 13); International Covenant on Civil and Political Rights (arts. 12, paras. 1, and 17); American Convention on Human Rights (arts. 11 and 22, para. 1); African Charter on Human and Peoples' Rights (art. 12, para. 1); European Convention on Human Rights (art. 8) and Protocol No. 4 thereto (art. 2, para. 1); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (arts. 49 and 147), Additional Protocol I thereto (arts. 51, para. 7, 78, para. 1, and 85, para. 4) and Additional Protocol II thereto (arts. 4, para. 3 (e), and 17); and International Labour Organization Convention No. 169 (art. 16).

V. Humanitarian access

A. International legal foundations governing humanitarian access

29. The need to establish and maintain humanitarian space is essential in order to effectively meet the humanitarian needs of conflict-affected and displaced populations, to mitigate suffering and to enable United Nations agencies, funds and programmes to exercise their mandates. In this context, it remains important that all sides respect their obligations and act in good faith to fully implement the principle of humanitarian access which is rooted in international humanitarian and human rights law. Free passage of relief goods and facilitation of humanitarian operations are correlated to a number of human rights, including the right to life, the right to a decent standard of living and the right to protection against discrimination. Moreover, building on the practice of the United Nations human rights treaty bodies, there is growing acceptance that the obligation of States to respect, protect and fulfil human rights includes an obligation to invite, accept and facilitate international (humanitarian) assistance, in particular if the State's resource capacities or other obstacles, such as lack of effective control of parts of the territory, limit its capacity to effectively address all humanitarian needs.

30. In the context of international conflict situations, international humanitarian law requires the establishment of conditions for rapid and unimpeded passage of all relief consignments, equipment and personnel. In non-international conflicts, States must organize relief actions for the civilian population, without any adverse distinction. The universal acceptance of these rules has established, as a norm of customary law in both international and non-international conflicts, that parties to a conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.

B. Operational challenges

31. Following the amendments introduced by the Government of Georgia to the Law on the Occupied Territories, taking into consideration recommendations issued by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe in October 2010, the Government of Georgia issued the "Regulation of the Government of Georgia on approval of modalities for conducting activities in the occupied territories of Georgia" which, among other things, serves as the guideline for the implementation of the Law. During the reporting period, the issuance of the modalities had no impact on the activities of the United Nations agencies, funds and programmes. Any possible future impact of the legislation in place on humanitarian access and humanitarian operations will need to be carefully monitored.

32. During the reporting period, the United Nations was able to maintain humanitarian access and implement protection and humanitarian assistance activities as planned. The liaison mechanism, with established offices in Tbilisi and Sukhumi, provides a framework for engagement and was successfully tested during the implementation of the WHO/UNICEF polio vaccination campaign. Consultations also continued with all relevant stakeholders in order to ensure up-to-date information on humanitarian needs of the population and to improve coordination and information flow.

33. During the reporting period, discussions were renewed on possible humanitarian access for the United Nations to the Tskhinvali region/South Ossetia. During their visits, the United Nations Representative, the co-chairs and other co-moderators of Working Group II of the Geneva discussions were able to witness some of the ongoing humanitarian and reconstruction projects, but also the still dire conditions at collective centres for displaced persons. The co-moderators of Working Group II have put forward concrete proposals on possible United Nations assistance in the organization of a comprehensive polio immunization campaign and the winterization of collective centres. However, these proposals have not been implemented and access for the United Nations humanitarian agencies has not been possible due to the continuing lack of agreement on the modalities governing humanitarian access. At the same time, the International Committee of the Red Cross continued to implement a number of projects throughout the area.

VI. Property rights of refugees and internally displaced persons

34. Property-related issues remain high on the agenda and were repeatedly addressed during the meetings of Working Group II of the Geneva discussions. The resolution of these issues remains contentious, in particular due to the gaps in property registration and prevailing disagreement over applicable norms. The matter is further complicated by the historical legacy of multiple legal transition processes related to property following the dissolution of the Soviet Union.

35. These factors have resulted in significant legal insecurity as regards property rights and related transactions, with a negative effect on the local population, including returnees and those considering return. Their concerns in relation to the protection of their property rights have been particularly deepened by the establishment of a commission to ensure the supremacy of law when settling the property rights of citizens of the Russian Federation in the Republic of Abkhazia and the issuance in the Tskhinvali region/South Ossetia of a decree entitled "Regulating measures of disputable housing issues on the territory of Leningori region, Republic of South Ossetia, and of resolution of the problems of returning citizens of the Republic of South Ossetia (forcibly displaced) to the places of previous residence". Media reports of alleged ethnically discriminatory policies contained in these instruments, which were protested by the Georgian authorities, have further aggravated fears of violations of the right to property. The Law of Georgia "On property restitution and compensation on the territory of Georgia for the victims of conflict in the former South Ossetia district" is not yet implemented in practice and has not resulted in restitution of property.

36. In order to familiarize participants in the Geneva discussions with applicable international law and standards governing the protection of property rights of displaced populations, an "information session" on housing and property rights was organized in conjunction with the twelfth round of the Geneva discussions on 26 July 2010. I reiterate my call on all parties to fully respect and protect the property rights of refugees, internally displaced persons and their descendants and adhere to the principles on housing and property restitution for refugees and displaced persons (referred to as the "Pinheiro principles") and the underlying norms of international law, including human rights law. I encourage the parties to resolve the complex legal and political issues that impede progress and implement restitution or compensation measures in order to ensure the full enjoyment of their

property and housing rights by displaced populations. The United Nations agencies, funds and programmes remain committed to providing the necessary assistance in meeting these challenges.

VII. Timetable for the voluntary return of all refugees and internally displaced persons

37. No timetable for the voluntary return of all refugees and internally displaced persons has been developed given the prevailing environment and continued discussions among the parties. As long as conditions for organized returns in safety and dignity are not fulfilled and mechanisms for property restitution are not established, the design of a comprehensive timetable or road map for returns must remain an open matter. These challenges should not prevent the parties, acting on their own and in cooperation, from working towards identifying durable solutions for all displaced persons, giving particular attention to the implementation of the right to return. I call upon all participants in the Geneva discussions to engage constructively on this issue, building on international law and relevant principles.

38. In the absence of conditions conducive to organized returns and appropriate implementation mechanisms, the United Nations entities will continue to concentrate their efforts on providing the conflict-affected population, including spontaneous returnees or persons in the process of returning, with humanitarian assistance and support for their reintegration. The United Nations remains committed to proceeding, in consultation and cooperation with all parties concerned, with the development of a timetable or road map addressing all components outlined in my report (A/63/950), in particular paragraph 20.

VIII. Conclusion

39. Over the past 2 1/2 years, the Geneva international discussions, co-chaired by the European Union, OSCE and the United Nations, have remained an important forum for the key stakeholders to discuss security and stability and humanitarian issues, in particular related to the return of refugees and internally displaced persons. Despite the difficult nature of the discussions, the complexity of the issues and divergences in the positions, the participants in the discussions have been engaging in a regular fashion. The United Nations-facilitated "information sessions" on relevant best practices and lessons learned have helped enrich the formal sessions of the Geneva discussions. The United Nations stands ready to continue to support such information-sharing along with its further humanitarian engagement on the ground. Regular and genuine engagement in the Joint Incident Prevention and Response Mechanism is also essential. Continued and more energetic efforts are needed to reach an agreement on practical steps to stabilize the security situation and meet the pressing humanitarian concerns of the affected population, including of the internally displaced persons.